IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 998 of 1994

with

CRIMINAL APPEAL No 31 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHANULAL RAMJIBHAI SORTHIYA

Appearance:

1. Criminal Appeal No. 998 of 1994

MR KT DAVE APP for Petitioner No. 1

MR GAURANG H BHATT for Respondent No. 1 (absent)

NOTICE SERVED for Respondent No. 1

2. Criminal Appeal No. 31 of 1995

MR PM THAKKAR for Petitioner No. 1 (absent)

MR PM THAKKAR for Respondent No. 1 (absent)

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/01/2003

ORAL JUDGEMENT

#. Food Inspector Ravjibhai Parmar visited shop of respondent-accused-Bhanulal Ramjibhai Sorthiya in village Keshod, which was run in the name and style of "Satyam Dughdalay". The respondent-accused, who was selling the buffalo milk in a container, which was having 5 ltrs. milk. He took the sample of 660 ml. milk of buffalo from the shop of the respondent-accused and sent it to the Public Analyst for his report. As per the P.S. Report dated 26.8.1985 sample of milk found to be adulterated in the sense that it was having 4.2% instead of 6% milk fat and 8.36% instead of 9% Solid Not Fat. Thus, it does not confirm to the standard laid down under the provisions of Food Adulteration Act, 1955. In view of this report of the Public Analyst, the complainant filed complaint being Criminal Case No.651/85 before the court of learned J.M.F.C., Keshod against the respondent-accused for the offence under Sections 7 and 16 of the Food Adulteration Act.

#. After considering the oral as well as documentary evidence led by the complainant the learned Judge acquitted the accused on two grounds that; (1) the complainant was not qualified Food Inspector and (2) he has not taken sample in compliance of the rules. Against this order of acquittal passed by the learned Trial Judge, the State of Gujarat has filed Criminal Appeal No.998/94 and the original complainant-Food Inspector-Ravjibhai Parmar has also filed Criminal Appeal No.31/95.

#. Learned APP, Shri Dave has taken me through the reasoning assigned by the learned Judge for acquitting the respondent-accused in his impugned order of acquittal. He submitted that the learned Judge was wrong in acquitting the accused on the ground that the Food Inspector was not qualified inspector. I would not like to go into this question because the learned Judge has acquitted the respondent-accused also on the ground that the Food Inspector had not taken the sample of milk in accordance with the rules. The food Inspector had admitted in his evidence that while taking sample of milk from the accused, he has not churned the milk, which was supposed to be done by Food Inspector. According to his evidence, the accused himself churned the milk and gave it to him. This is not in compliance with rules. The

Act which was required to be done by the Food Inspector cannot be done by anyone else. Apart from this fact, there is a marginal difference in the sample of the milk, which was taken by the Food Inspector from the accused on 29.7.1985. The sample came to be analyzed by the Public Analyst only on 26.8.1985 i.e. nearly after a period one month. As per his report, 4.2% was found instead of 6% for the milk fat i.e. 1.8% less and Solid Not Fat was found 8.36% whereas the requirement is 9%. Thus, hardly .64% was found less. In these type of cases where offence was committed almost 18 years back and except the fact that the sample of milk was having less percentage of milk fat and Solid Not Fat and there is nothing to show that the sample was found to be adulterated, therefore, when the learned Magistrate acquitted the accused for the offence under Sections 7 and 16 of the Food Adulteration Act, 1994, then I would not like to interfere with such order of acquittal after so many years.

In view of the above, both these appeals fail and are hereby dismissed. Bail bonds of respondent-accused stand cancelled.

(B.J.Shethna, J.)

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